IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4473 of 2004

Date of Decision: 24.9.2007

Jaswant Singh

..Appellant.

Vs.

Gurdev Singh and others

..Respondents.

CORAM: HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.Deepak Arora, Advocate for the appellant.

Mr.Amit Jain, Advocate for respondent No.1.

* * *

HEMANT GUPTA, J.

This order shall dispose of RSA No.4473 of 2004 filed by the plaintiff against the judgment and decree passed by first Appellate Court whereby his suit for declaration to the effect that he is owner in possession of land measuring 101 kanal 16 marlas in village Simbli was partly dismissed. RSA No.4776 of 2004 arises out of a suit filed by the respondent Gurdev claiming that the plaintiff is owner in possession of ½ share of the land measuring 224 kanals situated in village Simbli, 1/4th share of land measuring 24 kanals 4 marlas situated in village Bajrawar, 1/2 share out of the land measuring 343 kanals 7 marlas situated in village Chhabbewal, was decreed by the learned first Appellate Court.

The appellant herein is the son of Hazara Singh, who died on 6.12.1972. The appellant filed suit for permanent injunction on 5.6.1972 alleging himself to be in possession as a co-sharer of land situated in village Simbli. In the said suit, the parties entered into compromise and on the basis of compromise Ex.P1, a decree was passed on 8.12.1972. The

interpretation of the said compromise is in dispute in the present second appeal. As per the appellant, he has become owner in possession of 12-1/2 acres of land situated in village Simbli whereas as per the defendant, the plaintiff was admitted to be owner of 8 acres of land situated in village Simbli but was given possession of another land measuring 4-1/2 kanals in respect of his share, situated in village Chhabewal and Bajrawar.

The compromise decree is Ex.P1 and Ex.D4 whereas the compromise deed the basis of aforesaid decree, has been produced as Ex.D3.

Learned counsel for the appellant has vehemently argued that a decree for possession of land measuring 12-1/2 acre was passed on 8.12.1972, Ex.P1 in favour of the plaintiff and therefore, the plaintiff is the owner in possession of the said land. It is contended that compromise deed Ex.P1 as mentioned in the decree, has not been proved in accordance with law as no permission has been sought by the defendant to lead secondary evidence of the said compromise deed, therefore, the judgment and decree of the Court below is not sustainable.

On behalf of the respondents, it is pointed out that the Court's original record containing Ex.P1 was burnt in fire and that Ex.D3 is certified copy of the compromise deed produced on record and therefore, the terms of the compromise recorded in Ex.P1, have been rightly taken into consideration by the Court while returning a finding that plaintiff is owner of 8 acres of land whereas he is in possession of another 4-1/2 acres in lieu of land in other villages.

Having heard learned counsel for the parties, I do not find any illegality or irregularity in the judgment and decree passed by Court below.

It could not be disputed by learned counsel for the appellant that in fact the Court's record was burnt in fire which took place at Hoshiarpur. Ex.D3 is certified copy of the terms of the compromise. The certified copy of the deed of compromise upon which a decree was passed by the Court has been produced by the respondent. Then, it was for the appellant to lead evidence to prove that the document Ex.D3 is not the terms of the compromise arrived at between the parties. A perusal of the document Ex.D3 shows that ownership rights were recognised in respect of land measuring 8 acres situated in village Simbli and that he was given possession of total 12-1/2 acres of land in lieu of land of the appellants situated in other villages. Therefore, the judgment and decree passed by the Court below is based upon proper appreciation of the terms of compromise Ex.D3.

In view of the above, I do not find any illegality or irregularity in the findings recorded by first Appellate Court, which may give rise to any substantial question of law in the present second appeal.

Dismissed.

(Hemant Gupta)
Judge

24.9.2007
Meenu